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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,897	06/12/2000	Lawrence William Host	FUSION.0002P	3745
20529	7590	09/22/2004	EXAMINER JUNG, MIN	
NATH & ASSOCIATES 1030 15th STREET, NW 6TH FLOOR WASHINGTON, DC 20005			ART UNIT 2663	PAPER NUMBER

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/591,897

Applicant(s)

HOST, LAWRENCE WILLIAM

Examiner

Min Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 and 42-51 is/are pending in the application.
- 4a) Of the above claim(s) 1-23, 32-36 and 42-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-31 and 47-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 24-31 and 47-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Lamarque, III et al., US 6,690,651 (Lamarque).

Lamarque discloses a method and apparatus for changing routing when the quality of service falls below an acceptable level. Regarding claims 24-31 and 47-51, Lamarque teaches that when the quality of the path one end user uses to connect to another end user falls below a quality of service that is acceptable, then the call is rerouted so that the call takes a different path which provides a higher quality of service on the packet based network. See col. 1, line 60 –col. 2, line 7, col. 3, lines 52-60, col.

4, lines 17-20, and col. 8, lines 12-22. The call taking a different path inherently covers the action of transmitting packets to a third location before transmitting them to the destination. In Lamarque, the test packet of the present invention may read on the packets transmitted prior to the path changing action is taken, or the test packets implied by the teaching of monitoring application and "pinging" described at col. 7, lines 56-62. The present invention also calls for each location comprising interfaces. Having interfaces in the user location in Lamarque is an inherent feature at least to accommodate voice over the digital network. Further, specifically shown is the interface within each gateway (Fig. 3). Further, Lamarque teaches determining the quality of service from the latency measurement (col. 7, lines 56-62). Further, specifically regarding the limitation of claim 28, Lamarque's teaching is targeted at the satisfactory communication quality for voice over IP. See col. 1, lines 44-54.

Further, specifically regarding claims 47-51, the path characteristic packets and test packets may read on either the packets transmitted prior to the path changing action is taken, or the test packets implied by the teaching of monitoring application and "pinging" described at col. 7, lines 56-62.

### ***Response to Arguments***

3. Applicant's arguments filed July 23, 2004 have been fully considered but they are not persuasive. Applicant's argument is based primarily on the assumption that Lamarque reroutes packet network connections using a circuit switched network. However, Lamarque teaches the rerouting using either one of a path on the packet-

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based network and a path through the PSTN. Lamarque specifically teaches "The calls may be transferred or rerouted in a number of ways. For example, the path may be to another path having a higher quality of service on the packet based network or to a path through a legacy telephone environment" (col. 4, lines 17-20), and "With reference now to Fig. 10, a message flow diagram for transferring a call from one packet based network path to another packet based network path is depicted in accordance with a preferred embodiment of the present invention. .... In these examples, the transfer application is also located at the application server for call transfers that establish a new path within the packet based network." (col. 8, lines 12-34). Regarding the first, second, and third locations on a computer network, as previously addressed in the rejection, the call taking different path inherently covers the action of transmitting packets to a third (different) location before transmitting them to the destination. The reasoning for this is based on the fact that the different path taken by the packets would traverse different sets of nodes in the LAN and WAN. Although Lamarque does not show the nodes within the LAN and WAN, a plurality of nodes are inherent in the networks to provide packet routing path. Thus, for a packet to take the different path to reach its destination, it must traverse a third (different) location (node). In the claims, the "third location" is recited in the context : "sending said data packet to a third location prior to sending said data packets to said second location". Lamarque's teaching (with the inherency) reads on this very general recitation.

### **Conclusion**

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4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127. The examiner can normally be reached on Monday, Tuesday, and Thursday 8AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 703-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ  
September 17, 2004

  
Min Jung  
Primary Examiner